



Testimony of Brian Ramaley  
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Before the  
U.S. House of Representatives  
Committee on Energy and Commerce  
Subcommittee on Energy and the Environment

Hearing on  
H.R. 3258, the  
“Drinking Water System Security Act of 2009”

and  
H.R. 2868, the  
“Chemical Facility Anti-Terrorism Act of 2009”

October 1, 2009

**Summary of Major Points of the Testimony of Brian Ramaley  
October 1, 2009**

- Since the enactment of the Public Health Protection and Bioterrorism Preparedness and Response Act of 2002, the Environmental Protection Agency has regulated the physical security of the nation's drinking water systems. Given the need to coordinate security rules with the public health requirements of the Safe Drinking Water Act, AMWA believes that EPA should continue oversight of any new or updated water security program, and the water sector's exemption from the Department of Homeland Security's CFATS program should continue.
- If EPA continues to regulate the security of drinking water systems, it should also regulate wastewater utility security under a similar program. Any regulatory approach that divides water sector security among different federal agencies could lead to confusing and contradictory standards – especially for utilities that provide both drinking water and wastewater service to a community.
- AMWA understands that H.R. 2868, the “Chemical Facility Anti-Terrorism Act,” is not intended to apply to drinking water systems. AMWA opposed similar legislation in the 110<sup>th</sup> Congress (H.R. 5577) that would have subjected drinking water systems to federal “IST” mandates through CFATS. The Association has strong concerns that H.R. 2868 as written would apply CFATS and “IST” mandates to wastewater utilities.
- H.R. 3258, the “Drinking Water System Security Act,” represents an improvement over previous water security proposals because it maintains the ability of local water system experts to choose the most effective disinfectant chemical and would not allow the federal government to broadly dictate water disinfection methods to the nation's drinking water systems.
- Sensitive drinking water system security information such as vulnerability assessments and site security plans must be strongly protected against public disclosure. To this end, AMWA appreciates that H.R. 3258 maintains current criminal penalties that apply to individuals who unlawfully release protected utility information.
- H.R. 3258 directs EPA to engage in rulemaking to formulate appropriate standards for the sharing of protected information with individuals and groups such as first responders, utility employees, and union representatives. If enacted, AMWA will work with EPA to ensure that sensitive information is not shared more broadly than is necessary to facilitate a coordinated response to a utility security incident.

Good morning Mr. Chairman, Ranking Member Upton, and distinguished members of the Committee. My name is Brian Ramaley, and I am currently the Director of Newport News Waterworks in Newport News, Virginia. The Waterworks provides clean and safe drinking water to more than 400,000 customers every day in Hampton, Newport News, Poquoson, and parts of York and James City counties. The utility uses ozone – not gaseous chlorine – as the primary disinfectant to kill microorganisms such as bacteria and viruses, but operates one gaseous chlorine facility for the purpose of residual disinfection in the water distribution system. While my utility already has plans to convert this facility to a non-gaseous form of chlorine, it still has strong concerns about allowing the federal government to broadly dictate water disinfection chemicals to individual utilities.

In addition, I currently serve as the President of the Association of Metropolitan Water Agencies, or “AMWA,” which is an organization representing the largest publicly owned drinking water providers in the United States. AMWA’s members provide clean and safe drinking water to more than 125 million Americans from Alaska to Puerto Rico. AMWA has a strong interest in enacting water security legislation that does not jeopardize the ability of local utilities to properly disinfect drinking water, and in my testimony today I will explain the Association’s position on H.R. 3258, the “Drinking Water System Security Act.”

#### **H.R. 5577, H.R. 2868, and the Chemical Facility Anti-Terrorism Standards**

To begin, I want to thank the Committee for crafting water facility security legislation that represents a significant improvement over similar proposals that Congress has recently considered. Last year’s version of the “Chemical Facility Anti-Terrorism

Act” (H.R. 5577 in the 110<sup>th</sup> Congress) would have allowed the Department of Homeland Security, through its “Chemical Facility Anti-Terrorism Standards” program, or “CFATS,” to force drinking water utilities across the country to replace their use of critical water disinfectant chemicals with alternate substances – without regard for the public health, environmental, or cost consequences that could result. The blanket promotion of these alternates, sometimes referred to as “inherently safer technologies,” or “IST,” fails to recognize the complex process that all water utilities must undertake to evaluate potential disinfection options that maintain the utility’s compliance with the Safe Drinking Water Act and facilitate the delivery of clean and safe drinking water to millions of customers.

The legislation also could have conflicted with federal security measures put in place at drinking water systems through the Public Health Protection and Bioterrorism Preparedness and Response Act of 2002. Following the 9/11 terrorist attacks, this new law created a drinking water security program at the Environmental Protection Agency (through Section 1433 of the Safe Drinking Water Act) and required all drinking water utilities serving more than 3,300 customers to prepare vulnerability assessments and emergency response plans to identify weaknesses in their security posture and prepare for security-related incidents.

In light of the EPA-based security requirements and subsequent unilateral measures taken by drinking water utilities (such as security upgrades, increased training, and chemical reduction and substitution when feasible), in 2006 Congress exempted drinking water systems from duplicative facility security regulation through the Department of Homeland Security’s CFATS. Because of these existing EPA security

programs and the inherent differences between drinking water systems and chemical facilities, H.R. 3258 as introduced continues the drinking water sector's explicit exemption from the DHS CFATS regulations.

Including drinking water facilities within the CFATS program would subject them to duplicative and potentially contradictory federal security regulations, and could also allow DHS officials in Washington to force local water systems to adopt alternate disinfection chemicals without regard for or knowledge of the public health and environmental consequences that could result. Considering EPA's strong track record in implementing Section 1433 of SDWA, AMWA believes that any new water security legislation approved by Congress must continue the Agency's oversight of water system security.

For these and other reasons, AMWA strongly opposed H.R. 5577 when it was introduced in 2008. We understand that this year's version of the legislation (H.R. 2868) is not intended to apply to drinking water utilities, but we would oppose any effort to amend the bill to allow DHS to impose "IST" mandates on drinking water utilities through the CFATS program.

In addition, AMWA would be uncomfortable with any regulatory scheme that subjected the drinking water sector to DHS' CFATS but charged EPA with enforcing the regulations on drinking water systems. Such a plan would be a recipe for confusion, as the lines between agencies would be blurred and individual water systems would be left uncertain as to which federal agency was ultimately responsible for their oversight.

### **The "Drinking Water System Security Act"**

The "Drinking Water System Security Act," introduced in July as H.R. 3258, is

the product of months of cooperative work between the Energy and Commerce Committee staff, AMWA and other water sector associations, and other stakeholders. While the legislation is not perfect, AMWA believes that it represents a workable compromise that addresses our most serious concerns. Importantly, the bill would maintain the drinking water sector exemption from CFATS, but while also subjecting water systems to EPA-based security regulations that are consistent with the framework of CFATS (which includes tiering facilities based on risk and requiring compliance with risk-based performance standards). As a result, AMWA believes that this legislation adequately addresses fears of a water sector security “gap” that EPA and DHS officials have previously cited in testimony before Congress.

It has long been AMWA’s position that all drinking water disinfection choices are best made by utility experts at the local level, so it is critical that the “Drinking Water System Security Act” maintains this important concept of local choice. Specifically, the bill does not allow EPA or any other federal entity to broadly require drinking water systems across the country to change their chosen water disinfection methods or chemicals. Instead, H.R. 3258 would require individual drinking water systems that employ certain hazardous chemicals to evaluate the feasibility of potential “IST” options, and decide on their own whether the utility will begin using these alternate disinfection options in the future.

To respond to the Committee’s concerns about water systems that may fail to adequately consider potential alternate disinfectants, the legislation would direct the state agency charged with primary enforcement of the federal Safe Drinking Water Act to review the “IST” determinations of utilities at the highest risk of attack. If the state

agency agrees with the utility's assessment, then this is the end of the process, and the utility continues to disinfect its water with its chosen chemicals. Alternately, if the state agency believes that an "IST" should be implemented at a particular utility, then the state may direct the utility to do so after the state considers factors such as feasibility, cost, and possible water quality implications. EPA would only have the ability to directly review the "IST" decisions of utilities in states without SDWA enforcement primacy (Wyoming and the District of Columbia), and therefore lacking a state-level enforcement agency.

I must point out here that it is a major concession by AWWA to agree to have individual utilities' disinfection choices subject to review by an outside government agency through this program. As I previously stated, the drinking water community continues to believe that local water utility experts are best equipped to make appropriate disinfection chemical choices based on their expertise on factors such as source water quality, disposal of disinfection byproducts, supply chain reliability, and treatment facility size and location. However, Newport News Waterworks and other drinking water utilities across the country work closely with state enforcement agencies, and this relationship has invested our state enforcement agency with a significant degree of understanding of our operations. Because of our joint concern for public health and safety, I am confident that state enforcement agencies would act responsibly when reviewing a utility's disinfectant choice, and generally defer to the water treatment determinations made by local water experts.

I would not, however, have the same confidence if EPA or any other federal department or agency were to be invested with the power to broadly and directly mandate the adoption of "IST," as there is virtually no way that a federal agency in Washington

could make a sound judgment about what disinfectants are and are not realistic options for my utility, as well as each and every other drinking water utility in the United States. This compromise therefore ensures that there is a state-level review in place to protect against a hypothetical situation where a water system may overlook the clear and easily attainable security benefits of changing disinfectant chemicals, while also preventing the federal government from inserting itself into local water treatment decisions or broadly directing all of the nation's water systems to end their use of necessary disinfectants such as gaseous chlorine. Additionally, because the legislation will require many drinking water systems to explore the feasibility of "ISTs" that they otherwise may not have considered as a disinfection alternative, it will lead to increased knowledge and awareness of alternate disinfection processes within the drinking water community.

Other areas of the "Drinking Water System Security Act" represent mostly sensible updates to the requirements of SDWA's Section 1433. For example, while that law required the one-time completion of facility vulnerability assessments and emergency response plans, H.R. 3258 would require water systems to update these documents at least once every five years. While some utilities, like mine, have voluntarily updated their plans, this legislation will require that all covered utilities do so. This will ensure that the assessments and response plans kept on-hand by water systems are current and take into account changing circumstances such as the completion of a new treatment plant or a change in security procedures. Additionally, H.R. 3258 would require water systems to complete (and keep updated) site security plans that explain how security vulnerabilities at the system are being addressed. And similar to the CFATS framework, EPA would place different water systems in different "tiers" of risk, based upon the



potential public health consequences of a successful terrorist strike against the water facility. Water systems in the highest-risk tiers would have to meet a stricter combination of security standards, but systems would be able to select layered security measures that, taken together, would meet the requirements of their tier.

I would also like to commend the Committee for omitting language that would have allowed the federal government to shut down the operations of a drinking water system for failure to comply with a portion of the new security requirements. Last year's H.R. 5577 would have granted DHS such shut-down authority over drinking water systems, but this provision failed to recognize that if a local water utility does shut down, for example, basic fire protection and sanitation services are immediately suspended, thereby leading to a significantly increased public health risk or even the evacuation of the community. AMWA appreciates that the Committee recognized that the public health and environmental costs of allowing the federal government to close a community water system – even temporarily – would far outweigh any potential security-related benefits.

Finally, the information protection provisions of this legislation represent an improvement over language in H.R. 5577 and H.R. 2868 that would have forced the distribution of water utility security plans to outside groups – significantly weakening existing protections of sensitive utility information against public disclosure. A utility's vulnerability assessment could provide a terrorist or a criminal with a roadmap of how to exploit the facility's weaknesses, so this bill properly exempts these documents from disclosure under the Freedom of Information Act or a similar state or local law. H.R. 3258 also reflects AMWA's request that current criminal penalties and substantial fines

remain an option for individuals found to have unlawfully distributed protected utility information. Any weakening of the penalties for the unlawful disclosure of protected information would increase the chances of an unauthorized leak of sensitive utility security information, and such a leak that put this information in the public domain would provide terrorists and criminals with a detailed account of where and how a utility's security could best be compromised. Because such an outcome could put millions of water customers at permanent risk, it is crucial that Congress maintains these penalties that for nearly seven years have prevented this information from being illegally released.

While this sensitive information will continue to be protected against unauthorized disclosure, the legislation does provide an avenue for additional individuals to access portions of the data. Specifically, EPA is directed to formulate standards to “facilitate the appropriate sharing of protected information” with entities such as local first responders, certain water utility employees, and their union representatives. While the Association remains skeptical of broadening access to this sensitive information, AMWA looks forward to participating in EPA's development of standards that will set the ground rules for how certain information may be accessed under appropriate conditions that will facilitate an effective response to a security incident. During this process we will seek to ensure that this sensitive information remains closely guarded and is not unnecessarily shared with outside entities that would not be directly involved with the response to a security incident at a water facility.

### **Suggested Improvements**

Despite the improvements that this legislation represents, AMWA still hopes to continue working with the Committee and other members of Congress to further

strengthen H.R. 3258. For example, one such clarification that should be added to the bill is a clear definition of a “covered water system.” While I believe that it is the intent of the Committee to limit the bill’s application to operations within the fence line of a drinking water system’s treatment plant and chemical storage facility, H.R. 3258 could be read to apply to the far reaches of a utility’s water distribution system – and thus require additional measures that would do little to increase the security of hazardous chemicals that are stored on-site.

Additionally, the new requirement that drinking water systems annually provide at least eight hours of security training to certain employees is an arbitrary mandate that fails to recognize that some large water systems may have more comprehensive security training requirements than other, smaller systems. AMWA supports annual security training for relevant employees, but recommends that the eight-hour minimum be removed.

Another potential improvement is the addition of an appeals process that a utility may instigate if they disagree with their primacy state agency’s order to adopt an alternate water disinfection method. Because the decision on water disinfectants is so critical to public health and safety, I believe the opportunity to be heard in an appeal is reasonable before a utility may be forced to make a change.

Finally, and most importantly, more work remains to be done to streamline these new drinking water facility regulations with those that are likely to be imposed upon wastewater systems. AMWA’s membership remains concerned that H.R. 3258 would apply only to the nation’s drinking water systems, while H.R. 2868 as approved by the House Homeland Security Committee would regulate the security of wastewater utilities

separately under the DHS CFATS program. This approach would be especially problematic for municipalities that operate both drinking water and wastewater systems, as it would force the employees of such systems to comply with two varying sets of security rules issued by two different federal entities.

AMWA understands that part of the reason for the current structure of the program is a result of the jurisdictional framework among committees in the House of Representatives. However, all members of Congress need to understand that dividing security regulations of drinking water and wastewater systems would impose severe burdens on many utilities across the country, and unevenly apply federal security standards that should apply uniformly to municipal operations. In short, I think we can all agree that municipal wastewater systems are much more similar to municipally-operated drinking water systems than they are to privately owned and operated chemical manufacturing facilities. Therefore, because H.R. 3258 would charge EPA with regulating the security of drinking water systems, we also believe that the security of wastewater systems should be regulated under the same (or a similar) EPA-based program. I hope that members of the Energy and Commerce Committee will work with their colleagues on the Homeland Security and Transportation and Infrastructure panels to accomplish this request that will protect public health and avoid duplicative layers of federal requirements on local communities.

In closing, on behalf of AMWA I want to thank the members of the Committee for drafting a reasonable update of the federal security standards that apply to the nation's drinking water systems. Nearly two year's worth of work by the Association and congressional staff have led to this bill. While it is not perfect, the legislation recognizes

the expertise of local water utility managers in choosing appropriate disinfectants while also requiring them to properly consider alternate disinfectant chemicals and methods that may pose a reduced risk to their customers and the surrounding community. Moreover, the bill reflects AMWA's longstanding insistence that the federal government not have the power to broadly dictate disinfection methods or shut down local water systems for noncompliance with security regulations. Because of these factors, AMWA is pleased to offer its support for H.R. 3258 as introduced, and hopes to continue to work cooperatively with the Committee and other stakeholders in the weeks and months ahead to further improve the proposal.

Thank you again for the opportunity to testify, and I would be happy to respond to any questions that members of the Committee may have.